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SENATE BILL 8038 By
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HOUSE BILL 27 of the Second Extraordinary Session
By Head

AN ACT to enact "The Comprehensive Tax Reform Law of 1999" and to amend Titles 7, 12, 30, 57 and 67. This act makes appropriations for fiscal years 1999-2000 and 2000-2001 to administer, enforce and effectuate its purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2106(a) is amended by deleting the words "in accordance with generally accepted accounting principles" and substituting instead the words "in accordance with subsection (b) below".

SECTION 2. Tennessee Code Annotated, Section 67-4-2106, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) For purposes of this section, for taxpayer's filing on a separate entity basis, "net worth" is defined as the difference between a taxpayer's total assets less its total liabilities computed in accordance with generally accepted accounting principles. However, if the taxpayer does not maintain its books and records in accordance with generally accepted accounting principles, net worth shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the taxpayer's net worth for purposes of the tax levied by this part. For taxpayers required by this part to file as a unitary group on a combined basis, "net worth" is defined as the difference between each such taxpayers' total assets less its total liabilities computed in accordance with generally accepted accounting principles.

SECTION 3. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following new subsections:

( ) For purposes of the franchise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes. Except for unitary groups of financial institutions and business entities that have been required or permitted to file franchise tax returns on a combined, consolidated or separate accounting basis under Section 67-4-2112, each taxpayer shall be considered a separate and single business entity for Tennessee franchise tax purposes and shall file its Tennessee franchise tax return on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members of its unitary group.

( ) Notwithstanding any provision of law to the contrary, qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified REIT subsidiaries described in Section 856(i) of such Code, which are disregarded for federal income tax purposes and are included in the federal tax return filed by the owner(s), shall be disregarded for Tennessee franchise tax purposes and shall be included in the franchise tax return filed by the owner(s).

SECTION 4. Tennessee Code Annotated, Section 67-4-2107(b), is amended by adding the following sentence:

Provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the interest shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the value of the taxpayer's ownership interest for purposes of the tax levied by this part.

SECTION 5. Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting subdivision (1) in its entirety and substituting instead the following:

(1) Except for entities treated as partnerships for federal tax purposes (excluding S corporations), the measure of the tax hereby levied shall in no case be less than the actual value of the real or tangible property owned or used in Tennessee, excluding exempt inventory. The sole franchise tax measure for entities treated as partnerships for federal tax purposes (excluding S corporations) shall be net worth computed in accordance with the provisions of section 67-4-2106.

SECTION 6. Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting subdivision (3) in its entirety and substituting in its place the following:

(3) For purposes of this section, "property" shall be valued at cost less accumulated depreciation in accordance with generally accepted accounting principles; provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the property shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the property's value for purposes of the tax levied by this part. For this purpose, "property" includes a taxpayer's ownership share of the real or tangible property owned or rented by any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities. In cases where part or all of the property is rented, the value of rented property used shall be determined by multiplying the net annual rental by the following multiples:

Multiples

(a) Real property …………………………………………………………..8

(b) Machinery and equipment used in manufacturing and processing …3

(c) Furniture, office machinery and equipment ……………………………2

(d) Delivery or mobile equipment …………………………………………1

SECTION 7. Tennessee Code Annotated, Section 67-4-2111(b), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, "property" shall include a taxpayer's ownership share of the real or tangible property owned or rented by any general partnership, or person treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. "Property" shall also include a taxpayer's ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly indirectly through one or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee franchise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c) below.

SECTION 8. The provisions of this act shall apply to tax years beginning on or after July 1, 1999.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.